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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th May 2008

No.5340-1i/15-1/2008/L.E.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 31st March, 2008 in Industrial Disputes Case No.1/2005 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager (Administration), O.S.R.T.C., Baramunda Bus Stand, Bhubaneswar, Dist-Khurda and their workman Shri Basudev Panda was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE NO.1/2005

The 31st March, 2008

Present : Shri Srikanta Nayak, O.S.J.S. (Jr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

Between: Shri Basudev Panda ,
Aged about 46 years,
S/o- Late Balaram Panda,
At- Dhiakuramsh,
P.O.- Sadanandapur,
P.S.-Dharmasala,
Dist-Jajpur,
Ex Conductor, O.S.R.T.C.,
Bhubaneswar

.. Complainant—Workman

And

District Transport Manager (Admn.),
O.S.R.T.C., Baramunda Bus Stand,
P.O.- Bhubaneswar, Dist-Khurda

.. Opposite-Party—Management

Appearances : Shri M.C. Sahoo,
Authorized Representative

.. For the Complainant—Workman

Shri D. Adhikari, A.L.O.

.. For the Opp.-Party—Management

AWARD

This Award arises out of a petition filed under section 33-A of the Industrial Disputes Act, 1947 by the above named complainant-workman.

2. The case of the complainant (hereinafter referred to as the 'workman' is that he was working as a conductor under the O.S.R.T.C., Bhubaneswar till the 20th December 2004 and on that date his service was terminated on the allegation that he allowed some passengers to move without ticket. On the 4th November 2004 the A.T.M. checked the bus bearing No. OR 02Q 8409 plying from Mukhiguda to Bhubaneswar and noticed that some persons were moving without ticket. A proceeding was drawn up against him and he gave reply stating that due to strike of the private bus some passengers forcibly entered inside the bus and they were not in a position to pay the usual fare and during such negotiation the Checking Officer checked the bus. He was not given proper opportunity to place his case nor any independent witnesses were examined in the enquiry and his service was terminated. He was a member of the local Union, Bhubaneswar zone which was affiliated to the State Transport Employees Federation, which raised Industrial Dispute Case No.40 of 1996 and he was a concerned workman in the said Industrial Dispute Case. So, the termination of his service without taking permission is illegal for which he has filed the present Misc. case praying for reinstatement with back wages.

3. The case of the Opposite Party (hereinafter referred to as the Management) is that on the 4th November 2003 the bus was checked by the A.T.M. and found that eleven passengers were moving in the bus without ticket. So, ticket was issued to them at the spot. An enquiry was held against the delinquent and he was given all opportunities and he also participated in the enquiry and cross-examined the witnesses. The enquiry officer found him guilty and thereafter after serving notice, his service was terminated. The

present workman has nothing to do with Industrial Dispute Case No.40 of 1996 which was instituted by the O.R.T. Staff Federation. The present workman is not a member of that Union and the petition is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues were framed :—

ISSUES

(1) Whether the action taken by the D.T.M. (A), O.S.R.T.C., Bhubaneswar against the workman by way of dismissal from service is legal and/or justified ?

(2) If not, what relief the workman is entitled ?

5. The complainant-workman examined one witness in support of his case and the Management examined four witnesses in support of its case.

Issue Nos. 1 and 2 : —

6. In a proceeding under section 33-A of the Industrial Disputes Act, the power and scope of the Tribunal is limited one. In the decision reported in 1978 (II)LLJ (S.C.) Page-1 (Punjab Beverages Private Limited vrs. Suresh Chand), their Lordships held that “the first issue which is required to be decided in a complaint filed by the aggrieved workman U/s. 33-A is whether the order of discharge or dismissal made by the employer is in contravention of section 33. If the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merit.”

7. W.W.No. 1 deposed that he was a member of the State Transport Employees' Union, Bhubaneswar and admittedly Industrial Dispute Case No.40 of 1996 was instituted at the instance of the O.R.T. Staff Federation. So, it cannot be said that the present workman was a concerned workman in that Industrial Dispute Case. In Civil Appeal No. 15606 of 1996 arising out of SLP (C) No. 471 of 1992 between the District Transport Manager (Administration), O.S.R.T.C., Orissa and Dilip Kumar Nayak and another, the Hon'ble Supreme Court have held that “for efficient transaction of the business and co-ordinated services of the transport operations, several zones have been created by the Corporation and each zone is independent of its operational efficiency. Therefore, all the zones are not an integral part or parcel of co-ordinated transport service as a single unit. In these circumstances, the decision of the High Court that all the zones would be

considered to be an integral unit of the Corporation and pendency of industrial dispute in respect of one employee of a different zone, would be a bar for the Management to take disciplinary action against an employee in that particular zone is clearly wrong. We are of the opinion that in such a case there is no need for the Management to seek and obtain leave of the Industrial Tribunal under section 33-A of the Act.” Since no industrial dispute case was pending, the present petition U/s. 33-A is not maintainable.

8. Coming to the merit of the case, M.W. No.1 deposed that on the 4th November 2003 the bus was checked and it was found that 70 passengers were travelling in the bus out of which 11 passengers were travelling without ticket. So, as per rule tickets were issued. M.W. No.2 deposed to that effect and further deposed that he called the passengers moving without ticket who told that they had all paid the fare to the conductor. He prepared the checking report in which the conductor and the driver signed. M.W.No.3 deposed that he held the enquiry/examined the witnesses. The workman also cross examined the witnesses and ultimately he found the workman guilty and submitted his report as per Ext. C. M.W.No. 4 deposed that the enquiry officer conducted the enquiry and submitted his report on the 19th November 2004 holding the workman guilty of the charges. Copy of the same was served on the workman and the workman submitted his representation. After going through the enquiry report, he verified the past conduct of the workman and found that he was punished on three occasions. Keeping in mind the circumstances, the service of the workman was terminated. The fact that 11 passengers were travelling in the bus without ticket is not seriously disputed. The workman in his petition admitted that some persons were travelling in the bus who had no capacity to pay the fare. Ext. A reveals that 11 passengers were travelling without ticket and Ext. 3 reveals that tickets were issued at the sport. In the circumstances, the non-examination of independent witness in the enquiry in no way affects the enquiry or the genuineness thereof. In the decision reported in 2004 (103) FLR (S.C) page-428 (Divisional Controller, KSRTC (WWKRTC) *vrs.* A.T. Mane), their Lordships held that “since the only ground on which the finding of the Domestic Tribunal has been set aside being the ground that concerned passengers are not examined or their statement were not recorded, inspite of there being other material to establish the misconduct of the respondent we are of the opinion, the Courts below have erred in allowing the claim of the respondent.”

In the case in hand also the travelling of passengers without ticket is not seriously disputed and the evidence of M.W. Nos. 1 and 2 read with Exts. A and B clearly establish the same. The service of a conductor is a post of trust. So, for the breach of trust he deserves severe punishment and there is no material to interfere with the findings of the domestic enquiry or with the punishment awarded to him. Hence, on merit also the workman is not entitled to any relief.

The Misc. case is disposed of accordingly.

Dictated and corrected by me

Srikanta Nayak
dt. 31-03-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Srikanta Nayak
dt. 31-03-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

P. MALLICK

Under-Secretary to Government